APPEAL NO. 031409
FILED JULY 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 22, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appealed, arguing that the evidence was sufficient to establish that the claimant met the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(2) (Rule 130.102(d)(2)). The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Rule 130.102 set out the statutory and administrative rule requirements for SIBs. At issue, in this case, is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2) and 130.102(d)(4). The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on April 4, 2001, with an impairment rating of 15%; that he has not commuted any portion of his impairment income benefits; that the claimant made no effort to obtain employment during the qualifying period of the fifth quarter; and that the qualifying period for the fifth quarter of SIBs is from November 1, 2002, through January 30, 2003. The claimant based his request for entitlement to SIBs for the fifth quarter on the alternative assertions that he participated in a vocational rehabilitation program with the Texas Rehabilitation Commission (TRC) and/or had a total inability to work.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The hearing officer found that the claimant took a class during the qualifying period recommended by, but not sponsored by the TRC.

The claimant testified that during the qualifying period for the fifth quarter he took a single class as recommended by the TRC as a "trial run." There was correspondence from the TRC in evidence which indicated that the claimant was involved in an individualized plan for employment (IPE) where he "is to participate in a training program and based on improvement of his medical condition or completion of training TRC will look at selective job placement assistance." However, no IPE was admitted into evidence. It was undisputed that the TRC did not pay for the course taken by the claimant during the qualifying period.

In Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, the evidence of the TRC sponsorship came from the claimant's testimony and the majority determined that this testimony provided minimally sufficient support for the determination that the claimant satisfied the good faith job search requirement under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC. While Appeal No. 010952-s cautioned against overreading the decision, it determined that documentary evidence of the TRC sponsorship was not absolutely required and it necessarily follows, from that determination, that the claimant is not required to introduce the vocational rehabilitation program in evidence in order to establish SIBs entitlement. However, in the instant case, the hearing officer was not persuaded that the claimant was enrolled in a full-time program sponsored by the TRC. We cannot agree, without a clearer understanding of what requirements were placed on the claimant by the TRC, that the hearing officer's finding that the claimant was not enrolled in a full-time program sponsored by the TRC is against the great weight and preponderance of the evidence.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The evidence sufficiently supports the hearing officer's determination that, during the qualifying period for the fifth quarter, the claimant had some ability to work, and thus did not make a good faith effort to obtain employment commensurate with her ability.

After review of the record before us, and the complained-of determinations, we have concluded that there is sufficient factual and legal support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Petrosurance Casualty, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge